IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3546 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHIBEN LALLUBHAI RATHOD

Versus

SECRETARY, EDUCATION DEPARTMENT

Appearance:

MR SV BACHANI for Petitioner

RULE SERVED for Respondent No. 1

MR RJ OZA for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/01/2001

ORAL JUDGEMENT

#. The lady petitioner was appointed as a Part-time Sweeper in the office of the Officer Commanding, 6th Gujarat Girls Battalion N.C.C., Surat, namely, in the office of the respondent no.4, on monthly pay of Rs.10=00

in the year 1968. Thereafter, her pay was increased to Rs.150=00 per month with effect from 1-12-1976. Her pay was increased from time to time, and on the date of filing the petition, she was drawing Rs.300=00 per month. On the date of the petition, she served for a period about 20 years. A circular Annexure-'B' dated 26-12-1980 was issued by the Government of Gujarat, under which guidelines were given for absorption of employees who had continued for 3 years as temporary employees. When this circular came to the notice of the petitioner, she moved an application Annexure-'C' dated 14-7-1983 for her absorption. No action was taken on this representation. Thereafter, another representation Annexure-'D' dated 22-7-1988 was given, which also remained unattended. The last representation was given on 23-2-1989 Annexure-'E', which also did not receive attention of the respondents, especially, the respondent no.4. Annexure-'F' is the termination order dated 12-5-1989, which was received by the petitioner, in which, it was intimated that, in view of embargo imposed by the two circular letters dated 17-2-1989 and 27-4-1989, her absorption was not possible, nor she could be continued on temporary post. Accordingly, her services were terminated. Consequently, the petitioner filed this writ petition challenging the order of termination. By interim order dated 1-9-1989, the respondents were directed to reinstate the petitioner as a Part-time Sweeper on the same terms and conditions till further order. This interim order has not been vacated. The petition was admitted on 1-9-1989.

#. In this way, on the date of hearing of this petition, it seems that the petitioner has been serving for more than 32 years as a temporary employee, but she has not been absorbed on permanent post.

#. Learned counsel for the petitioner and Shri RC Kodekar, learned AGP have been heard.

#. Shri RC Kodekar, learned AGP has tried to justify the impugned order of termination contained in Annexure-'F' on three grounds. The first is that, in view of embargo imposed on continuation of temporary appointments through Gujarat Letter Nos.5025/NCC-CIV dated 17-2-1989 and 27-4-1989, the petitioner could not be absorbed on permanent post. However, the learned counsel for the petitioner informs that the copies of these circular letters were not made available to the petitioner. Even, in the counter affidavit, these two circulars have not been annexed. What is annexed is another document prescribing rules for recruitment to Class-IV employees vide Annexure-1. Thus, the respondents have not produced

before the court the two circulars of 17-2-1989 and 27-4-1989, which allegedly impose embargo on temporary appointments. Consequently, on this ground, the impugned order can not be justified.

#. In the second place, in the impugned termination order, there is a reference of circular of Gujarat Finance Department No.PEE-1080-288-CHH dated 26-12-1980. Taking help from this circular, order of termination was sought to be justified. However, Annexure-'B' is the said circular dated 26-12-1980, which provides in Para-2 that, "Whenever part-time employee has continued for 3 years, the Head of Department should make efforts as per prescribed recruitment rules and procedure for filling in the posts to absorb such incumbents in regular posts that may be available under his control and to replace the incumbent by a fresh part-time employee." This circular, therefore, does not impose any embargo, and consequently, it can not be said that, on the basis of this circular, that the services of the petitioner could be terminated.

#. It is not the case of the respondent that there is no vacancy. On the other hand, vacancy has been alleged in the writ petition, which has not been specifically controverted.

#. The next contention of Shri Kodekar is that, the petitioner did not fulfill the eligibility criteria prescribed under rules, specially under Annexure-1 to the counter affidavit. As such, she could not be absorbed. Reference has been made by him to Para-7 of the counter affidavit. However, by examining Annexure-1 to the counter affidavit, Shri Kodekar could not satisfy which criteria laid down in this circular dated 23-12-1982 was not fulfilled by the petitioner. Thus, on the strength of vague counter affidavit, the impugned order of termination can not be sustained.

#. On identical facts, when Government circulars were violated, this Court in BC WADHWANA v. D.G.P. 1998(3) GLR 2041 held that, 'since the Government circulars for regularization of part time sweepers fulfilling certain criteria were not followed, the Government should absorb and regularize all the part time sweepers in the cadre of Class-IV employee.' The view taken in this case applies in all force to the facts of the case before me. Consequently, the impugned order can not be sustained.

#. The writ petition, therefore, succeeds and is hereby allowed. The impugned order Annexure-'F' dated 12-5-1989 is hereby set aside. The respondents are directed to

absorb the petitioner on permanent basis with all consequential benefits within a period of two weeks from today. The petitioner will be entitled to all consequential benefits and benefits of the interim order passed by this Court on 1-9-1989. No order as to costs.

January 23, 2001. [D.C. Srivastava, J.]

/sakkaf